

**From:** Edwards, Crystal  
**Location:** Ex. 6 - Personal Privacy  
**Importance:** Normal  
**Subject:** 2018 EFAB Membership Recruitment/Recommendations  
**Start Date/Time:** Tue 11/14/2017 9:00:00 PM  
**End Date/Time:** Tue 11/14/2017 10:00:00 PM  
[EFABRecruitmentRecommendationsMeetingMShapiro.docx](#)  
[Outreach Plan 2018 FINAL.DOCX](#)  
[EFABMembership2018TimelineFINAL.DOCX](#)  
[GRID EFAB Membership November2017FINAL.DOC](#)  
[EFAB Membership Expirations 2018-2019 Oct2017.doc](#)  
[EFAB Needs for FY 2018\(January\)-gebhardt.docx](#)  
[EFAB Aggregate Chart FINAL November2017 \(003\).docx](#)  
[Region EFAB Recruitment 2018 \(003\).docx](#)  
[final draft fac directive-10.31.2017.pdf](#)

**Attached are the documents for today's meeting.**

- Outreach Plan
- Timeline
- EFAB Membership Grid
- EFAB Membership Expirations
- EFAB Needs for FY 2018
- EFAB Aggregate Chart which summarizes Board representations by region and diversity
- EFAB Candidates List
- Administrator's Directive

We are seeking authorization to solicit three new Board members from the remaining pool of candidates of which there are 31; two to replace Board members that will be leaving after 5th the winter meeting and one to replace a candidate that resigned prior to them "completing" the appointment process. The addition of three new members will bring EFAB membership back to the prior level of 32.

The last document that is attached is an Administrator Directive regarding eligibility for service on an Agency FACA. It is included as it may affect eligibility for certain existing members. We have made an inquiry of ODACMO. They have informed us that they are reviewing and will provide a FACA guidance.





E. SCOTT PRUITT  
ADMINISTRATOR

**SUBJECT:** Strengthening and Improving Membership on EPA Federal Advisory Committees

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The U.S. Environmental Protection Agency relies on independent, expert advice from a variety of federal advisory committees to help inform sound decision-making and fulfill its core mission of protecting human health and the environment. Given the critical role these committees play, it is in the public interest to select the most qualified, knowledgeable, and experienced candidates. In order to strengthen and improve the independence, diversity and breadth of participation on EPA federal advisory committees, the Agency shall, consistent with applicable laws and regulations, apply the following principles and procedures when establishing the membership of such committees:

1. *Strengthen Member Independence:* Members shall be independent from EPA, which shall include a requirement that no member of an EPA federal advisory committee be currently in receipt of EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle shall not apply to state, tribal or local government agency recipients of EPA grants.
2. *Increase State, Tribal and Local Government Participation:* In the spirit of cooperative federalism and recognition of the unique experience of state, tribal and local government officials, committee balance should reflect prominent participation from state, tribal and local governments. Such participation should be appropriate for the committee's purpose and function.
3. *Enhance Geographic Diversity:* Given the range of environmental and public health considerations across the country, membership should be balanced with individuals from different states and EPA regions. Emphasis should be given to individuals from historically unrepresented or underrepresented states and regions.
4. *Promote Fresh Perspectives:* To encourage and promote the inclusion of new candidates with fresh perspectives and to avoid prolonged and continuous service, membership should be rotated regularly.

This directive is intended to improve the internal management of EPA and does not create a right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, EPA, its officers or employees, or any other person. Where appropriate or to be consistent with applicable law, I reserve the right to exercise my discretion to depart from the procedures set forth in this directive.

With these improvements to EPA's federal advisory committees, the Agency is taking another step to provide the public with a better, more effective government.

E. Scott Pruitt  
October 31, 2017



**From:** Penman, Crystal

**Location:** Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** EFAB Full Board Mtg February 20-21, 2018 (Washington, DC)

**Start Date/Time:** Fri 12/8/2017 4:00:00 PM

**End Date/Time:** Fri 12/8/2017 5:00:00 PM

OW Request w Mike Shapiro EFAB Winter 2018 Mtg.docx

EFAB 2018 Charter Renewal Transmittal Memo 12-06-17.docx

EFAB 2018 Renewal Charter Draft 12-06-17.docx

EFAB 2018 Membership Balance Plan 12-06-17.docx

EFAB 2018 Charter Justification 12-06-17.docx

EFAB 2018 Charter Renewal FRN 12-06-17.docx

EFAB 2018 Re-Charter FRN Checklist 12-06-17.docx

EFAB Aggregate Chart FINAL November2017 (003).docx

EFAB Charge Matrix-Winter 2018.docx

final draft fac directive-10.31.2017.pdf

EFAB Pre-brief Agenda.docx

GRID EFAB Membership November2017FINAL(3).doc

**From:** Shapiro, Mike

**Location:** Ex. 6 - Personal Privacy

**Importance:** Normal

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**Start Date/Time:** Fri 12/8/2017 4:00:00 PM

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[final draft fac directive-10.31.2017.pdf](#)

[EFAB Pre-brief Agenda.docx](#)

[GRID EFAB Membership November2017FINAL\(3\).doc](#)

**To:** Penman, Crystal[Penman.Crystal@epa.gov]; Edwards, Crystal[Edwards.Crystal@epa.gov]  
**Cc:** Gebhardt, Jim[Gebhardt.Jim@epa.gov]; Gueriguian, Leo[Gueriguian.Leo@epa.gov]; Scott, Pamela[Scott.Pamela@epa.gov]; Farris, Erika D.[Farris.Erika@epa.gov]; thomas.liu@baml.com[thomas.liu@baml.com]  
**From:** Ziobro, Joseph  
**Sent:** Tue 11/14/2017 2:38:37 PM  
**Subject:** Materials for EFAB Membership Meeting Today  
[Outreach Plan 2018 FINAL.DOCX](#)  
[EFABMembership2018TimelineFINAL.DOCX](#)  
[GRID EFAB Membership November2017FINAL.DOC](#)  
[EFAB Membership Expirations 2018-2019 Oct2017.doc](#)  
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[Region EFAB Recruitment 2018 \(003\).docx](#)  
[final draft fac directive-10.31.2017.pdf](#)



Crystal and Crystal,

The final materials for today's 4:00 PM 2018 EFAB Membership meeting are attached. See note below from the team.

**Attached are the documents for today's meeting.**

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**Joseph Ziobro**

U.S. Environmental Protection Agency

Office of Wastewater Management

Washington, DC

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**To:** Childers, Pat[Childers.Pat@epa.gov]; Saltman, Tamara[Saltman.Tamara@epa.gov]  
**From:** Gillian Mittelstaedt  
**Sent:** Fri 12/22/2017 6:55:21 PM  
**Subject:** Fwd: Legal Challenge to EPA's Oct 31 Directive  
[Earthjustice Pruitt v ISCHE et al 2017.pdf](#)  
[In 'defense of science' The Washington Post 12 21 17.pdf](#)

Hopefully you're both out of the office and with family for the next several days, but just saw this and thought I'd forward while it's at top of my inbox. It's from another organization but the topic relates to CAAAC...Does this new directive apply to CAAAC members? And if so, won't that result in about 1/3 of the members being ineligible going forward? Any insights would be appreciated, although I realize there may not be concrete answers just yet.

Thanks,  
Gillian

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**From:** Jennifer Ames <jlames@berkeley.edu>  
**Sent:** Friday, December 22, 2017 11:41:37 AM  
**Subject:** Legal Challenge to EPA's Oct 31 Directive

To ISCHE Members:

Yesterday ISCHE Council voted to be plaintiffs and seek review of a directive that bars recipients of EPA grants from serving on EPA federal advisory committees (see attachment).

Plaintiffs including Physicians for Social Responsibility, National Hispanic Medical Association, International Society for Children's Health and the Environment, Professor Edward Avol, Dr. Robyn Wilson, and Dr. Joseph Árvai seek review of a directive issued by Scott Pruitt, Administrator of the Environmental Protection Agency ("EPA" or "Agency"), on October 31, 2017 ("Directive"), that bars recipients of EPA grants from serving on EPA federal advisory committees.

Please contact Jenn Ames or me if you are the recipient of a US EPA award or if you currently serve on a US EPA scientific advisory board or advisory committee and are impacted by this directive.

If there is enough interest, we can set up a conference call to discuss it.

Bruce Lanphear  
Vice-President, ISCHE  
[blanphear@sfu.ca](mailto:blanphear@sfu.ca)  
778-387-3939

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Jennifer L. Ames



Coordinator  
International Society for Children's Health and the Environment (ISCHE)  
<http://www.ische.ca/>

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UC Berkeley School of Public Health  
101 Haviland Hall  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

PHYSICIANS FOR SOCIAL  
RESPONSIBILITY  
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NATIONAL HISPANIC MEDICAL  
ASSOCIATION  
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INTERNATIONAL SOCIETY FOR  
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JOE ÁRVAI  
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EDWARD LAWRENCE AVOL  
1520 First Street  
Manhattan Beach, CA 90266;

and

ROBYN WILSON  
2859 Eastleft Dr.  
Columbus, OH 43221,

*Plaintiffs,*

v.

SCOTT PRUITT, Administrator, U.S.  
Environmental Protection Agency, in his  
official capacity,  
1200 Pennsylvania Ave., NW  
Washington, DC 20460,

*Defendant.*

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY RELIEF, INJUNCTIVE  
RELIEF, AND VACATUR**

## INTRODUCTION

1. Plaintiffs Physicians for Social Responsibility, National Hispanic Medical Association, International Society for Children’s Health and the Environment, Professor Edward Lawrence Avol, Dr. Robyn Wilson, and Dr. Joseph Árvai seek review of a directive issued by Scott Pruitt, Administrator of the Environmental Protection Agency (“EPA” or “Agency”), on October 31, 2017 (“Directive”), that bars recipients of EPA grants from serving on EPA federal advisory committees.

2. Though included in a document titled “Strengthening and Improving Membership on EPA Federal Advisory Committees,” the Directive impairs the ability of the committees to provide expert and balanced advice to the Agency by preventing the participation of highly-qualified scientists and medical professionals that receive EPA grants, while allowing persons receiving industry funding to serve.

3. The Directive is unlawful and arbitrary and capricious in violation of:
- a. uniform federal ethics requirements issued by the Office of Government Ethics (“OGE”), pursuant to statutory authority under 18 U.S.C. § 208(c) and Presidential authority delegated to OGE by Executive Order;
  - b. procedural requirements applicable to supplemental federal ethics regulations, to the extent that the Directive purports to supplement, rather than override, the uniform federal ethics requirements;
  - c. the Federal Advisory Committee Act, 5 U.S.C. App. II § 1 *et seq.*, and its implementing regulations, 41 C.F.R. Part 102–3, which require EPA to assure “fair balance” in the membership of federal advisory committees and avoid inappropriate influence by “any special interest”; and

- d. statutes defining the membership requirements and duties of EPA federal advisory committees, including the Clean Air Science Advisory Committee, 42 U.S.C. § 7409, the Science Advisory Board, 42 U.S.C. § 4365, and the Science Advisory Panel, 7 U.S.C. § 136w(d), which direct EPA to select advisory committee members on the basis of their expertise and qualifications.
- 4. By this action, Plaintiffs seek declaratory relief, injunctive relief, and vacatur of the Directive.

### **JURISDICTION AND VENUE**

- 5. This Court has jurisdiction under 28 U.S.C. § 1331.
- 6. Venue is proper in this judicial district under 28 U.S.C. § 1391(c)(2), (e)(1) because:
  - a. Plaintiffs Physicians for Social Responsibility and National Hispanic Medical Association both reside and have their respective principal places of business in this district;
  - b. Defendant resides in this district; and
  - c. a substantial part of the acts or omissions giving rise to the claim occurred in this judicial district.

### **PARTIES**

- 7. Plaintiff Physicians for Social Responsibility (“PSR”) is a national non-profit organization that, guided by the values and expertise of medicine and public health, works to protect human life, human health, and the environment. PSR’s strategy for achieving its mission is to educate and activate the medical and broader health community, and the public, through research, analysis, collaboration, and targeted communications and to advocate for government and societal change at the local, state, national, and international level.

8. Plaintiff National Hispanic Medical Association (“NHMA”) is a non-profit organization representing the interests of 50,000 licensed physicians and other health care professionals in the United States. NHMA was founded and incorporated in 1994 with its principal place of business in Washington, D.C. NHMA’s mission is to empower Hispanic physicians and health care professionals to lead efforts to improve the health of Hispanic and other underserved populations. NHMA achieves its mission by working in collaboration with Hispanic state medical societies, residents, medical students, and other public and private sector partners. NHMA also serves as a resource to federal agencies, Congress, and the White House, providing these policymakers with expert information in order to strengthen health care delivery to Hispanic communities across the nation. NHMA provides networking opportunities for its members and other stakeholders who impact the health of Hispanic communities, including an annual conference that brings together health care professionals, government representatives, and others. NHMA develops leaders who can serve on boards, including federal advisory committees, that impact health policies and the health of Hispanic communities. NHMA actively nominates its members to federal advisory committees.

9. Plaintiff International Society for Children’s Health and the Environment (“ISCHE”) is a non-profit organization of professional scientists that works to promote children’s health by addressing the unique vulnerabilities of children to pollutants. ISCHE promotes research into the threats children face from environmental hazards and measures to protect them from those hazards. It translates these research findings into policy solutions to protect children. ISCHE makes current scientific findings more accessible to the health care, public health, and policy communities via position papers, technical reports, and testimony. ISCHE also promotes the training of professionals in children’s environmental health.

10. Plaintiff Edward Avol is a Professor of Clinical Preventive Medicine at the Keck School of Medicine at the University of Southern California. His expertise is in exposure assessment and the respiratory and cardiovascular effects of airborne pollutants in at-risk populations, including children and individuals with compromised lung function.

11. Plaintiff Dr. Robyn Wilson is Associate Professor of Risk Analysis and Decision Science in the School of Environment and Natural Resources at the Ohio State University. Her expertise is in the area of the individual decision-making process under conditions of risk and uncertainty. Dr. Wilson was a member of the U.S. Environmental Protection Agency's Chartered Science Advisory Board until she was removed from her position pursuant to the Directive.

12. Plaintiff Dr. Joseph Árvai is the Max McGraw Professor of Sustainable Enterprise, and the Director of the Erb Institute for Global Sustainable Enterprise at the University of Michigan. His expertise is in the risk and decisions sciences. Professor Árvai recently completed his second full term as a member of the U.S. Environmental Protection Agency's Chartered Science Advisory Board, and is a member of the U.S. National Academy of Sciences' Board on Environmental Change and Society.

13. Defendant Scott Pruitt is the Administrator of the Environmental Protection Agency. Plaintiffs sue him in his official capacity as the Agency's highest-ranking official. Pruitt is responsible for the supervision and management of all decisions and actions of the EPA, and charged with complying with federal laws and regulations governing federal advisory committees and their membership.

## **FACTUAL BACKGROUND**

### **I. EPA ADVISORY COMMITTEES**

14. EPA uses advisory committees to obtain valuable expertise, insight, and recommendations that guide the Agency's decision-making in fulfilling its core mission of protecting human health and the environment. Some EPA advisory committees are established by statute, some by the President, and some by the EPA Administrator.

15. EPA currently manages 22 federal advisory committees. They advise the Agency on a wide range of topics, including pesticides, drinking water quality, air quality, rural community welfare, and children's health.

16. EPA advisory committees are subject to the Federal Advisory Committee Act and uniform federal ethics rules established by the Office of Government Ethics ("OGE"). The EPA Administrator is responsible for ensuring compliance with applicable laws and regulations. The Administrator must ensure that they are fairly balanced, not unduly influenced by special interests, and free of impermissible conflicts of interest.

17. EPA advisory committees play a crucial role in assisting EPA in carrying out its statutory duties.

18. EPA advisory committees play a crucial role in ensuring the scientific accuracy of agency reports and findings. For example, in 2015, the EPA released a draft report on a five-year study of fracking and drinking water. Although the executive summary claimed that EPA had found no evidence of "widespread, systemic impacts" on water supplies,<sup>1</sup> the body of the report documented multiple cases in which fracking had contaminated communities' drinking

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<sup>1</sup> EPA, Office of Research and Development, Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources: External Review Draft at ES-6 (June 2015) (available at [http://ofmpub.epa.gov/eims/eimscomm.getfile?p\\_download\\_id=523539](http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=523539)).

water with toxic chemicals. The Science Advisory Board (“SAB”) investigated the discrepancy between the summary and EPA’s findings and publicly raised “concerns regarding the clarity and adequacy of support for several major findings.”<sup>2</sup> The Science Advisory Board urged the agency to reconsider, and EPA revised the report.<sup>3</sup>

19. The Committees also provide expert advice to EPA. For example, in 2008 EPA promulgated a rule lowering the primary national ambient air quality standard for ozone from 80 parts per billion to 75 parts per billion. *Mississippi v. EPA*, 744 F.3d 1334 (D.C. Cir. 2013). Polluting industries challenged EPA’s decision to lower the standard. *Id.* EPA justified the decision to lower the standard, in part, based on a unanimous recommendation by the Clean Air Scientific Advisory Committee to set the standard at a lower level, between 60 and 70 parts per billion. *Id.* at 1344-46. EPA’s decision was upheld by a reviewing court based, in part, on the scientific analysis and recommendations of the Clean Air Scientific Advisory Committee. *Id.* at 1345.

20. EPA advisory committees are made up of subject matter experts.

21. Service by qualified and knowledgeable members is critical to the effective operation of EPA advisory committees.

22. Many EPA advisory committee members are academic scientists and medical professionals employed by universities, hospitals, or other not-for-profit organizations who conduct cutting-edge scientific and technical research relevant to the work of the committees and

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<sup>2</sup> Science Advisory Board, Office of the Administrator, Letter at 2 (Aug 11, 2016) (available at [https://yosemite.epa.gov/sab/sabproduct.nsf/0/BB6910FEC10C01A18525800C00647104/\\$File/EPA-SAB-16-005+Unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/0/BB6910FEC10C01A18525800C00647104/$File/EPA-SAB-16-005+Unsigned.pdf)).

<sup>3</sup> Coral Davenport, *Reversing Course, E.P.A. Says Fracking Can Contaminate Drinking Water*, N.Y. Times, December 13, 2016 (available at [https://www.nytimes.com/2016/12/13/us/reversing-course-epa-says-fracking-can-contaminate-drinking-water.html?\\_r=2](https://www.nytimes.com/2016/12/13/us/reversing-course-epa-says-fracking-can-contaminate-drinking-water.html?_r=2)).



of EPA. Much of this work serves the public interest, not the interests of private, for-profit entities, and is wholly or partially funded by federal grants, including federal grants administered by EPA.

## II. EPA'S LONG-STANDING PRACTICE OF APPOINTING EPA GRANTEES TO SERVE ON ITS FEDERAL ADVISORY COMMITTEES

23. EPA has a consistent, decades-long practice of appointing EPA grantees to its federal advisory committees. Grantees who are not full-time federal employees typically serve as special government employees. EPA has never before viewed the receipt of EPA funds as disqualifying a person from service on federal advisory committees.

24. EPA has consistently taken the position that the fact that a person receives an EPA grant does not indicate a lack of independence from or lead to improper influence by the Agency on the committee.

25. EPA research grant recipients are selected on their merits through a competitive process. The process incorporates independent peer review to prevent improper influence over the selection process.

26. The National Academy of Sciences has conducted two independent reviews of EPA's primary program for support of scientific research, called Science to Achieve Results ("STAR"). The National Academy of Sciences has found that the STAR program is a competitive, peer-reviewed program created to improve EPA's access to the best scientists and engineers; that the STAR program has a rigorous peer-review process; and that the EPA has taken effective steps to ensure that the process does not suffer from conflicts of interest and is independent.

27. EPA has taken the position that working under an EPA grant does not impair a scientist's ability to provide independent technical or scientific advice to EPA. Only last year, EPA's position was that "the mere fact that EPA has awarded research grants to members of an [EPA advisory committee] does not establish that those members lack independence in violation of the [statute establishing the committee], or that the panel is improperly influenced by EPA."<sup>4</sup>

28. EPA has interpreted independence for purposes of scientific peer review as requiring that the reviewer not have been involved in producing the draft to be reviewed. It has not construed independence to suggest that EPA grantees are unable to provide disinterested advice.

29. EPA has consistently applied and conformed to uniform federal ethics regulations promulgated by OGE in its forms, guidance, and practice.

30. In a government-wide handbook establishing recommended approaches to peer review, the Office of Management and Budget has agreed with EPA's consistent position that receipt of a grant does not automatically mean that the grantee has a conflict of interest or lacks independence.<sup>5</sup>

31. EPA has taken the position that the most important factor in selecting advisory committee members is their knowledge, expertise, and skills.

32. Because EPA is a major sponsor of significant research, recipients of EPA funding are often leading experts in their fields of research and their expertise is valuable to EPA. EPA has taken the position that excluding its grantees from service on advisory

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<sup>4</sup> Memorandum Of Points And Authorities In Support Of Defendant's Motion To Dismiss at 34, Energy & Environment Legal Institute v. EPA, No. 1:16-cv-00915-TSC (D.D.C. July 15, 2016), ECF 11-2.

<sup>5</sup> Office of Management and Budget, Final Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664, 2669 (Jan. 14, 2005).

committees would disqualify some of those most qualified to render expert scientific and technical advice.

33. Until the Directive was issued, the only financial limitations on special government employees were those imposed by uniform federal ethics rules.

34. Until the Directive was issued, if a member of a federal advisory committee worked for an entity receiving an EPA grant—whether a government contractor, an academic institution, or a non-profit organization—that person could participate in matters of general applicability and was precluded from participating only in those matters that affect his or her employer in a special and distinct way.

### III. THE PRUITT DIRECTIVE PROHIBITING EPA GRANTEES FROM SERVING ON EPA FEDERAL ADVISORY COMMITTEES

35. On October 31, 2017, Pruitt issued a Directive that bars EPA grant recipients from service on any EPA federal advisory committee. The Directive appears in a document titled “Strengthening and Improving Membership on EPA Federal Advisory Committees,” which is attached to this complaint as Exhibit A.

36. In a statement announcing the decision, Administrator Pruitt stated that the purpose of the Directive is to “ensure that there’s integrity in the process and that the scientists that are advising us are doing so with not any type of appearance of conflict.”

37. Pruitt continued, “when we have members of those committees, that have received tens of millions of dollars in grants, at the same time that they’re advising this agency on rulemaking, that is not good and that is not right.”

38. The Directive provides: “Members shall be independent from EPA, which shall include a requirement that no member of an EPA federal advisory committee be currently in

receipt of EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant.”

39. A memorandum from Administrator Pruitt to other agency officials, issued the same day, describes the basis and purpose of the Directive. The memorandum is attached to this complaint as Exhibit B.

40. The memorandum claims that a prohibition on grantee service is needed to “strengthen[] the integrity, objectivity, and reliability of EPA [advisory committees].” It asserts that receipt of EPA grants “can create the appearance or reality of potential interference with [recipients’] ability to independently and objectively serve as [an advisory committee] member.”

41. The memorandum states that the Directive is “in addition to EPA’s existing policies and legal requirements preventing conflicts of interest among the membership of the Agency’s [advisory committees].”

42. In issuing the Directive, Administrator Pruitt stated, “This policy directive will take effect immediately.”

43. After issuing the Directive, EPA did not reappoint EPA grantees who had been serving on EPA advisory committees.

44. After issuing the Directive, EPA sought and accepted the resignations of EPA grantees who had been serving on EPA advisory committees.

45. A total of at least six grant recipients who were members of the EPA Science Advisory Board were removed pursuant to the Directive. One of those members was Plaintiff Dr. Robyn Wilson. Prior to issuance of the Directive, Dr. Wilson received an email from EPA seeking confirmation that she was a current recipient of EPA funding. Dr. Wilson confirmed that she was. Subsequent to issuance of the Directive, Dr. Wilson was asked whether she would

like to remain on the SAB or retain the EPA funding. She subsequently received an email notifying her that she had been removed from the SAB.

46. EPA staff is continuing to implement the Directive, including by sending email inquiries to current advisory committee members asking whether they currently receive any EPA grants.

47. After issuing the Directive, EPA appointed new advisory committee members to replace members removed pursuant to the Directive. Many of the replacement appointees work directly for industries regulated by EPA or receive financial support from such industries. For example, after issuing the Directive, EPA appointed the following individuals as members of the Science Advisory Board: Robert Merritt, an executive with Total, one of the world's largest oil and gas companies; Larry Monroe, an executive with Southern Company, an electric utility that operates coal- and gas-fired power plants; and Kimberly White, a Senior Director at the American Chemistry Council, a trade association for the chemical industry.

48. Other people who receive salaries or other financial support from industries regulated by EPA continue to serve as members of EPA advisory committees.

49. EPA did not provide public notice of the Directive for the purpose of taking public comment, nor did it take public comment.

50. EPA did not promulgate the Directive jointly with OGE, publish the Directive in the Federal Register, or codify the Directive as an addendum to the uniform federal ethics rules in title 5 of the Code of Federal Regulations. The Director of OGE did not concur in or co-sign the Directive.

## **LEGAL BACKGROUND**

51. Several interrelated legal authorities define and limit the authority of all federal agencies, including EPA, with respect to federal advisory committees and their members.

I. UNIFORM FEDERAL ETHICS RULES.

52. Pursuant to statutory authority and authority delegated by the President, OGE has established a comprehensive and uniform scheme for addressing potential conflicts of interest that may arise where an executive-branch employee—including a special government employee serving on a federal advisory committee—participates in a matter in which he or she has a financial interest.

53. Statutory authority for the uniform federal ethics rules promulgated by OGE is provided by 18 U.S.C. §§ 201-09.

54. Congress enacted 18 U.S.C. §§ 201-09 to address bribery, graft, and conflicts of interest among public officials.

55. The legislative history of these statutory provisions emphasizes the risk that excessive and unnecessary conflict of interest rules may pose to the ability of federal agencies to access the best scientific and technical advice. S.Rep. No. 2213, 87th Cong., 2d Sess., at 6-7. It explains that the statute strikes a careful and deliberate balance between the need to avoid conflicts of interest and the importance of having talented individuals be able to serve on federal advisory committees. *Id.*

56. Soon after enactment of these provisions, the Attorney General published a memorandum analyzing their purpose. Dep't of Justice, Memorandum Regarding Conflict of Interest Provisions of Public Law 87-849, 28 Fed. Reg. 985 (Feb. 1, 1963). It explained that the purpose of the Section 208 conflict of interest provisions is to “help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government.” *Id.* Prior statutory requirements were “unnecessarily severe” and “impeded the departments and agencies in the recruitment of experts for important work.” *Id.*

57. OGE too has analyzed the Congressional purpose in enacting 18 U.S.C. §§ 201-09. Those provisions “announced . . . that [Congress] had established conflict-of-interest measures with regard to [special government employees] that gave due regard to their proper interests and to those of the Government as well—measures that eliminated the need for ad hoc corrective adjustments in the future.”<sup>6</sup>

58. Section 208 prohibits federal employees from participating in any particular matter that will have a direct and predictable effect on their financial interests. 18 U.S.C. § 208(a). Its requirements apply to special government employees, including federal advisory committee members making recommendations or rendering advice. *Id.* § 208(b)(3).

59. Section 208 establishes several classes of circumstances in which the risk of a financial conflict of interest is or may be deemed sufficiently small or remote that the public official is permitted to participate in the matter at issue. *Id.* § 208(b)(1)-(3). One of these exceptions is specific to special government employees that serve on federal advisory committees, and permits those employees to participate in the event that a responsible official certifies that the potential for a conflict of interest is outweighed by the need for the individual’s services. *Id.* § 208(b)(3).

60. Section 208(d)(2) grants OGE authority to implement the provisions of section 208(b) by promulgating “uniform” federal regulations. 18 U.S.C. § 208(d)(2). Such regulations must be promulgated in consultation with the U.S. Attorney General and shall “list and describe exemptions” and “provide guidance with respect to the types of interests that are not so

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<sup>6</sup> Memorandum dated July 9, 1982 from J. Jackson Walter, Director of the Office of Government Ethics, to Heads of Departments and Agencies of the Executive Branch regarding Members of Federal Advisory Committees and the Conflict-of-Interest Statutes at 2.

substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.” *Id.*

61. OGE’s authority and obligation to promulgate uniform federal ethics rules is reinforced by Executive Order 12731. That Executive Order, entitled “Principles of Ethical Conduct for Government Officers and Employees,” directs OGE to establish ethics regulations for executive branch employees, in consultation with the Attorney General and the Office of Personnel Management. Executive Order 12731 § 201(a), (c).

62. The Executive Order provides that the regulations promulgated by OGE constitute “a single, comprehensive, and clear set of executive-branch standards of conduct.” *Id.* § 201(a).

63. Pursuant to these authorities, OGE has promulgated uniform federal ethics regulations governing financial conflicts of interest.

64. As OGE explained in promulgating the regulations, the “uniformity” required by law “cannot be achieved if agencies can pick and choose which provisions they adopt or override.” 57 Fed. Reg. 35,006, 35,0110 (Aug. 7, 1992).

65. Under the OGE regulations, an employee is disqualified from participating in a “particular matter” in which she has a financial interest if the matter will have “a direct and predictable effect on that interest.” 5 C.F.R. § 2635.402(c). A potentially disqualifying matter is one that is focused on the interests of specific people or discrete, identifiable classes of people, such as an adjudicative proceeding, an application for a permit, a contract, or a criminal charge. 5 C.F.R. § 2635.402(b)(3). It “does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons.” *Id.* A direct and predictable effect requires a “close causal link” between the government action and the



financial effect and a real, as opposed to a “speculative possibility that the matter will affect the financial interest.” *Id.* § 2635.402(b)(1).

66. The OGE regulations expressly address potential conflicts of interest that may arise where a special government employee, serving as a member of a federal advisory committee, participates in a matter in which she may have a financial interest. 5 C.F.R. § 2640.203(g). The relevant regulation provides, in part:

A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act . . . may participate in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal employment or non-Federal prospective employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class.

*Id.* (emphasis omitted.)

67. OGE regulations also provide illustrative examples to clarify what does and does not constitute an impermissible conflict for a special government employee serving on a federal advisory committee. *Id.*

68. The regulations provide the following as an illustration of a situation where a special government employee may participate in a matter: “A chemist employed by a major pharmaceutical company has been appointed to serve on an advisory committee established to develop recommendations for new standards for AIDS vaccine trials involving human subjects. Even though the chemist's employer is in the process of developing an experimental AIDS vaccine and therefore will be affected by the new standards, the chemist may participate in formulating the advisory committee's recommendations.” *Id.*

69. The regulations provide the following as an illustration of a situation where a special government employee may not participate in a matter: “The National Cancer Institute (NCI) has established an advisory committee to evaluate a university's performance of an NCI

grant to study the efficacy of a newly developed breast cancer drug. An employee of the university may not participate in the evaluation of the university's performance because it is not a matter of general applicability.” *Id.*

70. The OGE regulations establish procedures by which other federal agencies may supplement the uniform federal ethics requirements. Under the regulations:

(a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part . . . .

(b) After concurrence and co-signature by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the Federal Register for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. Supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the Federal Register.

5 C.F.R. § 2635.105(a), (b).

71. Executive Order 12731, like the OGE regulations, authorizes other federal agencies to supplement the OGE regulations with “regulations of special applicability to the particular functions and activities of that agency,” but requires that “[a]ny supplementary agency regulations” be promulgated jointly with OGE as an addendum to the uniform federal ethics regulations. Executive Order 12731 § 301(a).

## II. FEDERAL ADVISORY COMMITTEE ACT

72. Congress enacted the Federal Advisory Committee Act (“FACA”) in 1972 to improve the performance of federal advisory committees. In enacting FACA, Congress found and declared that standards and uniform procedures should govern the committees’ establishment, operation, administration, and duration. 5 U.S.C. App. II, § 2(b)(4).

73. FACA was intended to protect against undue influence by special interests over government decision-making. As the House Report emphasized:

One of the great dangers in this unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns. Testimony received at hearings before the Legal and Monetary Affairs Subcommittee pointed out the danger of allowing special interest groups to exercise undue influence upon the Government through the dominance of advisory committees dealing with matters in which they have vested interests. . . . This lack of balanced representation of different points of view and the heavy representation of parties whose private interests could influence their [advisory committee] recommendations would be prohibited by the provisions contained in [] the bill.

H.R. Rep. No. 92-1017, 92d Cong., 2d Sess. 6 (1972), *reprinted in* 1972 U.S.C.C.A.N. 3491, 3496.

74. FACA contains two requirements to prevent undue influence by any special interest, one related to the membership of federal advisory committees and another related to their advice and recommendations. First, with respect to membership, FACA requires that any legislation establishing a federal advisory committee “shall . . . require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee.” 5 U.S.C. App. II, § 5(b)(2). Second, with respect to advice and recommendations, FACA requires that such legislation ensure that the advisory committee’s advice and recommendations will not be “inappropriately influenced by the appointing authority or any special interest, but will instead be the result of the advisory committee’s independent judgment.” *Id.* § 5(b)(3).

75. FACA also applies these requirements to advisory committees established or utilized by federal agencies or other federal officials. 5 U.S.C. App. II, § 5(c); 5 U.S.C. App. II, § 3(2) (defining “advisory committee”).

76. FACA directs the Administrator of the General Services Administration (“GSA”) to prescribe administrative guidelines and management controls applicable to advisory committees. *Id.* § 7(c).

77. FACA directs the heads of other federal agencies to establish uniform administrative guidelines and management controls that are consistent with the GSA regulations. *Id.* § 8(a).

78. GSA has promulgated FACA implementing regulations addressing the obligations of agencies establishing or utilizing federal advisory committees. *See* 41 C.F.R. Part 102–3.

79. The GSA regulations require agency heads, including the EPA Administrator, to:

- a. comply with FACA and the GSA regulations, 41 C.F.R. § 102-3.105(a); and
- b. “[d]evelop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment.” *Id.* § 102-3.105(g).

80. The GSA regulations address the “interests and affiliations” of advisory committee members by directing agency heads to adhere to the uniform federal ethics rules established by OGE. Specifically, they direct agency heads, including the EPA Administrator, to assure that they comply “with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics (OGE) including any supplemental agency requirements, and other Federal ethics rules.” *Id.* § 102-3.105(h).

81. The GSA regulations explain that advisory committee members may be regular federal employees, special government employees, or representatives, and that most advisory committee members are special government employees or representatives. 41 C.F.R. § 102–3.130(h); *id.* § 102–3 App. A. to Subpart C (Question IV). They provide that special government employees are covered by the uniform federal ethics rules. *Id.* § 102–3 App. A. to Subpart C (Question IV).

82. The GSA regulations do not deem receipt of an agency grant to disqualify an individual from serving on a federal advisory committee that advises that same agency.

### III. STATUTES ESTABLISHING ADVISORY COMMITTEES

83. Many of the federal advisory committees managed by EPA are created by statute.

84. The Clean Air Scientific Advisory Committee (“CASAC”) is established by Section 109 of the Clean Air Act enacted on August 7, 1977. 42 U.S.C. § 7409. The CASAC shall be “composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.” *Id.* § 7409(d)(2)(A). The CASAC shall:

(i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

*Id.* § 7409(d)(2)(C).

85. The Science Advisory Board is established by the Environmental Research, Development, and Demonstration Authorization Act of 1978. 42 U.S.C. § 4365. “The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator” or various congressional committees. *Id.* § 4365(a). Each member of the SAB “shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.” *Id.* § 4365(b).

86. The Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory

Panel is established by section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). 7 U.S.C. § 136w(d). The Panel:

shall consist of 7 members appointed by the Administrator from a list of 12 nominees, 6 nominated by the National Institutes of Health and 6 by the National Science Foundation, utilizing a system of staggered terms of appointment. Members of the panel shall be selected on the basis of their professional qualifications to assess the effects of the impact of pesticides on health and the environment. To the extent feasible to insure multidisciplinary representation, the panel membership shall include representation from the disciplines of toxicology, pathology, environmental biology, and related sciences. If a vacancy occurs on the panel due to expiration of a term, resignation, or any other reason, each replacement shall be selected by the Administrator from a group of 4 nominees, 2 submitted by each of the nominating entities named in this subsection.

*Id.*

#### IV. THE ADMINISTRATIVE PROCEDURE ACT.

87. The Administrative Procedure Act (“APA”) authorizes judicial review of final agency action. 5 U.S.C. § 704.

88. The APA directs the reviewing court to hold unlawful and set aside agency action, findings, and conclusions found to be: arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law. 5 U.S.C. § 706(2)(A), (C), (D).

### **STANDING**

#### I. THE PRUITT DIRECTIVE HARMS EPA GRANTEEES WHO WISH TO SERVE ON EPA ADVISORY COMMITTEES AND DEPRIVES EPA OF HIGH-QUALITY EXPERT ADVICE.

89. The Directive has immediately and directly injured Dr. Wilson by leading to her removal with a full year remaining on her term. As a result, Dr. Wilson is suffering loss of professional opportunity in the form of professional and public service opportunities.

90. The Directive injures members of PSR, NHMA, and ISCHE, as well as Professor Avol, Dr. Árvai, and Dr. Wilson by forcing them to choose between serving on the EPA advisory committees and receiving grants to fund important scientific research.

91. As a result, members of PSR, NHMA, and ISCHE, as well as Professor Avol, Dr. Árvai, and Dr. Wilson, suffer loss of professional opportunity in the form of professional and public service opportunities or research funding.

92. For example, Dr. Jonathan Levy, a current PSR member and a professor at Boston University School of Public Health, is an expert on the relationship between exposure to air pollutants and human health effects. He is a current recipient of an EPA grant, through the Center for Research on Environmental and Social Stressors in Housing Across the Life Course, entitled Disparities in Exposure and Health Effects of Multiple Environmental Stressors Across the Life Course. The grant began in 2015 and runs through June 2020. Dr. Levy previously served on two EPA advisory committees, the Advisory Council on Clean Air Compliance Analysis from 2009-2014 and the Clean Air Subcommittee of the Board of Scientific Counselors in 2009. Dr. Levy views service on EPA advisory committees as a valuable professional and public service opportunity, and is interested in serving on EPA advisory committees in the future. Because he is a recipient of an EPA grant that continues through 2020, the Directive bars him from service on EPA advisory committees and causes him to suffer a loss of professional and public service opportunities.

93. Another example is Dr. Deborah Cory-Slechta, a current PSR member and a professor at the University of Rochester Medical School, where she runs a laboratory focused on understanding the contribution of environmental chemical exposures to human diseases and disorders of the central nervous system. Dr. Cory-Slechta has a long track record of and

commitment to public service. Dr. Cory-Slechta has served on numerous national review and advisory panels of the Environmental Protection Agency, the National Institutes of Health (“NIH”), the National Institute of Environmental Health Sciences, the Food and Drug Administration, the National Center for Toxicological Research, the National Academy of Sciences, the Institute of Medicine, the Agency for Toxic Substances and Disease Registry, and the Centers for Disease Control. She served on EPA’s Science Advisory Board for six years, and serves currently on EPA’s Chemical Assessment Advisory Committee. Dr. Cory-Slechta has been a recipient of EPA research grants in the past, including from 2005 to 2012 and from 2010 to 2015, and, but for the Directive, would apply for EPA research grants in the future. If forced to choose between service on EPA advisory committees and EPA grants, Dr. Cory-Slechta intends to prioritize public service and continue serving on the Chemical Assessment Advisory Committee. As a result, she will be ineligible for EPA grants, and will suffer a loss of professional opportunity.

94. Dr. Rob McConnell is a current member of ISCHE and a professor of preventive medicine at the University of Southern California. He has spent the past 20 years studying the health effects of air pollution on children. He has been a recipient of EPA grants in the past supporting this work and is a recipient of a current EPA grant supporting the Southern California Children’s Environmental Health Center. The grant began in 2013 and runs through 2018. Dr. McConnell also serves on the EPA Scientific Advisory Committee advising EPA on the review of the air pollution particulate standard. Because he is a recipient of an EPA grant, the Directive bars him from service on the EPA advisory committee. This causes him to suffer a loss of professional and public service opportunity.



95. Professor Avol is similarly harmed by the Directive. Professor Avol is an expert in the harm air pollution causes to children's respiratory and cardiovascular health. Professor Avol is a former recipient of EPA funding, having served as a core co-Director/investigator in one of the EPA-NIH co-funded Children's Environmental Health Centers. He has also served on EPA advisory committees multiple times, including the Clean Air Science Advisory Committee Expert Panel reviews for nitrogen and sulfur oxides (from 2007 through 2009), for particle matter (from 2009 through 2012), and for ozone (from 2011 through 2014). Professor Avol views service on EPA federal advisory committees as an opportunity to give back to society and advance the public good, as well as an important means of career advancement and intellectual growth. He is likely to apply for EPA grant funds to support his future research activities, and is interested in future participation on EPA advisory committees. Because of the Directive, he cannot do both, and will suffer a loss of professional opportunity.

96. Dr. Árvai is also similarly harmed by the Directive. Dr. Árvai is an internationally recognized expert in the risk and decision sciences; his research focuses on how individuals and groups can improve the quality of decision making in situations where tradeoffs are required across environmental, social, and economic priorities. He, like other parties to this action, has a long track record of and commitment to public service. Dr. Árvai served as a consultant to the EPA's Science Advisory Board Staff Office (on the topic of valuing the protection of ecological systems and services) between 2003 and 2008. He also served between 2011 and 2017 as a member of the EPA's Chartered Science Advisory Board. In addition, he has served on several committees and boards at the National Academy of Sciences, including the Board on Environmental Change and Society, the Roundtable on Public Interfaces of the Life Sciences, and the Committee on Strategies and Methods for Climate-Related Decision Support.

Dr. Árvai has been a recipient of EPA grants, as well as other federal agency grants, in the past, and were it not for the directive, would apply for EPA research grants in the future. If forced to choose between service on EPA advisory boards and EPA grants, Dr. Árvai would prefer to prioritize public service. As a result, he will be ineligible for future EPA grants, and he and his graduate students will suffer a loss of professional opportunities.

97. Scientists who receive or would like to obtain EPA funding, including members of the Plaintiff organizations, as well as Professor Avol, Dr. Árvai, and Dr. Wilson, suffer concrete harm from the Directive. The Pruitt directive makes them ineligible for service on EPA advisory committees if they receive grant funding. Serving on an EPA advisory committee is both a valuable professional credential and an opportunity to give back to the scientific community and the nation through public service. Losing eligibility for such service is a loss of a valuable professional opportunity.

98. Under the Directive, scientists who serve on EPA advisory committees must forgo EPA research funding. EPA is an important source of funding, particularly for cutting-edge and influential research. Competition for these grants is high, and receipt of a grant is itself a professional recognition. The ability to conduct experiments or research and to produce scientific knowledge is central to career advancement in the sciences. For scientists at academic institutions, such grants fund not only their own salaries but also lab space, equipment, and graduate students who assist in conducting research, all of which are important to their research and professional advancement. Indeed, the inability to attract sufficient grant funding can be fatal to a scientist's career. Being forced to forgo such funding is a loss of a valuable professional opportunity.

99. Additionally, the Directive causes significant harm to the public interest. Regardless of which path scientists choose as a result of the Directive—forgoing grants to fund new scientific knowledge or forgoing service—society loses out. Where researchers forgo grants, cutting-edge research may go unfunded. Where they forgo service, the public and the government are deprived of expertise on critical issues. At the same time as the Directive purges qualified individuals, it leaves in place people with financial interests in industries that are regulated by EPA. It thus leaves EPA advisory committees at greater risk of capture by special interest groups.

100. The injuries described above frustrate the organizational objectives of PSR, NHMA, and ISCHE, which include the advancement of scientific research on matters important to public health and the effective use of scientific knowledge to inform health policy, including the policies of the EPA.

#### **COUNT 1: VIOLATION OF UNIFORM FEDERAL ETHICS RULES**

101. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

102. The law governing financial interests of executive branch employees expressly addresses conflicts of interest among members of federal advisory committees—most of whom serve as “special Government employees.” 18 U.S.C. § 208(a)-(b). It also directs the Office of Government Ethics to promulgate “uniform regulations” implementing the statutory provisions. *Id.* § 208(d)(2).

103. Those implementing regulations establish “uniform” federal ethics requirements across all government agencies. 18 U.S.C. § 208(d)(2); *see also* Executive Order 12731 § 201(a), (c) (stating that the regulations promulgated by OGE constitute “*a single*,

*comprehensive*, and clear set of executive-branch standards of conduct” (emphasis added)).

Consequently, EPA lacks authority to adopt a policy that conflicts with OGE regulations.

104. The OGE regulations specifically address the risk of financial conflicts of interest for special government employees serving on federal advisory committees, and provide, in relevant part:

A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act . . . may participate in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal employment or non-Federal prospective employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class.

5 C.F.R. § 2640.203(g) (emphasis omitted).

105. The Directive erects a total bar on the participation of special government employees that receive EPA research grants, and thus bars them from advising on *any* matter. This absolute bar exists even when a special government employee’s financial interest is in the form of a salary from his or her non-Federal employer, such as a university or other non-profit organization, and thus “arises from his [or her] non-Federal employment.”

106. In adopting the Directive, EPA did not acknowledge that its previous, consistent position conflicts with the Directive, acknowledge that it is changing position, or explain why it is doing so.

107. The Directive conflicts with the uniform federal ethics rules adopted by OGE. Consequently, the Directive is “arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law,” and “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A), (C).

**COUNT 2: VIOLATION OF PROCEDURAL REQUIREMENTS FOR  
SUPPLEMENTING FEDERAL ETHICS RULES**

108. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

109. Under the OGE regulations, an agency that wishes to supplement the uniform federal ethics rules must “prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part.” 5 C.F.R. § 2635.105(a). Only “[a]fter concurrence and co-signature by the Office of Government Ethics,” may the agency submit its supplemental regulations for publication and codification in title 5 of the Code of Federal Regulations. *Id.* § 2635.105(b). Such supplemental agency regulations “are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the Federal Register.” *Id.*

110. Executive Order 12731 provides that individual agencies may “[s]upplement, as necessary and appropriate, the comprehensive executive branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency.” Executive Order 12731 § 301(a). However, “[a]ny supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency's expense, for inclusion in Title 5 of the Code of Federal Regulations.” *Id.*

111. The Directive’s bar on grant recipients serving on EPA advisory committees is a supplemental regulation within the meaning of 5 C.F.R. § 2635.105. Administrator Pruitt did not prepare and submit the Directive to OGE for its concurrence and joint issuance. EPA did not obtain the concurrence and co-signature of OGE on the directive and thereafter submit the

directive to the Federal Register for publication for inclusion in Title 5 of the Code of Federal Regulations.

112. In issuing the directive without complying with the applicable procedural requirements, Administrator Pruitt acted arbitrarily, capriciously, or not in accordance with law and “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

### **COUNT 3: VIOLATION OF FACA**

113. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

114. FACA protects against undue influence by special interests over government decision-making and requires that advisory committees have a fair balance of viewpoints in their memberships.

115. FACA’s mandates are applicable to every advisory committee established or utilized by federal agencies or other federal officials, including the EPA advisory committees covered by the Directive. *Id.* App. II § 5(c); *see also Id.* App. II, § 3(2) (defining “advisory committee”).

116. For decades, EPA has had an unbroken historical practice of not treating the receipt of EPA funds as disqualifying a person from serving on a federal advisory committee. EPA has long and consistently taken the position that the fact that a person receives an EPA grant does not indicate a lack of independence or render the person subject to improper influence.

117. Until recently, EPA has adhered to the provisions of the uniform federal ethics rules governing special government employees serving on EPA advisory committees. If a member of a federal advisory committee works for a company, government contractor, or academic institution that receives EPA funding, that person may participate in matters of general

applicability. He or she is precluded from participating only in those matters that directly affect his or her employer in a special and distinct way.

118. The Directive is arbitrary, capricious, and contrary to FACA in numerous ways.

119. First, the Directive marks a sharp departure from this past practice. It deems receipt of EPA grants as cause to disqualify prospective members from serving on EPA advisory committees if they are the principal investigator or co-investigator or reap substantial direct benefits from an EPA grant. Directive, ¶ 1. EPA has a long-standing practice of taking the opposite position. In adopting the Directive, EPA did not acknowledge that its previous, consistent position conflicts with the Directive, acknowledge that it is changing position, or explain why it is doing so.

120. EPA has not offered, and cannot offer, a rational explanation for reversing its prior practice.

121. Second, the new disqualification rule of the Directive appears under the heading, “Strengthen Member Independence,” and describes the general direction to ensure “[m]embers shall be independent from EPA.” *Id.* To the extent this is the rationale offered for the policy reversal, it runs counter to EPA’s past position and government-wide policy, without any reasoned explanation. In the past, EPA has taken the position that independence in a peer review means that the peer reviewers were not involved in producing the draft or document that is undergoing peer review. This is also the position embodied in the Office of Management and Budget’s Final Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664. EPA has not offered, and cannot offer, a reasoned explanation for departing from this long-standing government policy and its own position, or articulated a rational connection between facts found and conclusion reached.

122. Third, to the extent that EPA interprets FACA to require that every individual on a federal advisory committee must be independent of the agency, its interpretation is contrary to the statute and unreasonable. FACA requires only that the committees' advice and recommendations reflect the committees' independent judgment. To the extent that EPA claims that individual members' receipt of EPA grants prevents the committee from exercising independent judgment in developing advice and recommendations, EPA's claim lacks record support and EPA has failed to establish a rational connection between the facts found and the conclusion reached.

123. Fourth, the Directive treats similarly situated prospective committee members differently without any rational explanation. It lacks any comparable disqualification for serving on federal advisory committees for people who receive grants or other financial benefits from industry entities that have vested interests in EPA regulation and the scientific advice on which EPA bases its regulatory decisions. EPA allows individuals who work directly for or receive compensation from regulated industries or whose financial interests are impacted by EPA regulation to serve on federal advisory committees. EPA has offered no justification—rational or otherwise—for treating EPA grants as disqualifying while financial support or even employment by regulated industries is not.

124. In the past, EPA has treated employment by a regulated industry as a factor in ensuring both that the advisory committee is not dominated by a special interest and also in ensuring the advisory committee will have a fair balance of viewpoints among its membership. Implementing the Directive, EPA has removed scientists whose institutions receive EPA grants from several EPA advisory committees and has replaced those members with others, some of whom work directly for or receive funding from industries financially impacted by EPA



regulations and decisions. The result has been an increase in the proportion of advisory committee members who may have a vested interest that disfavors stronger EPA regulation. EPA has not explained how it is meeting its obligations under FACA to ensure its advisory committees have balanced memberships and are not unduly influenced by regulated entities by removing members who have no such vested interest and appointing more members with such interests.

125. The Directive is arbitrary, capricious, and contrary to FACA. *See* 5 U.S.C. § 706(2)(A).

#### **COUNT 4: VIOLATION OF STATUTES ESTABLISHING COMMITTEES**

126. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

127. Many of the EPA advisory committees subject to the Directive are established by statute or regulation, which define the membership requirements and duties of the Committees and their members. These statutes make subject matter expertise the principal factor in determining the membership of several EPA advisory committees. *See, e.g.*, 42 U.S.C. § 7409 (establishing the CASAC); 42 U.S.C. § 4365 (establishing the SAB); 7 U.S.C. § 136w(d) (establishing the FIFRA Scientific Advisory Panel). These statutes do not disqualify any individual on the basis of receiving grants from the Agency.

128. Past EPA practice and government-wide policy make expertise the most important factor in selecting scientific reviewers. The Directive's preamble similarly states that "it is in the public interest to select the most qualified, knowledgeable, and experienced candidates." In the past, EPA has taken the position that eliminating from peer review committees all scientists who have received grants or otherwise been affiliated with EPA would eliminate many of those most qualified to render expert advice.

129. Defendant Pruitt has not explained, and cannot rationally explain, how disqualifying scientists who work for institutions that receive EPA grants is consistent with past agency practice or the statutory direction to recruit the most qualified scientists for service on EPA advisory committees.

130. The Directive is arbitrary, capricious, and contrary to the statutes establishing EPA advisory committees. *See* 5 U.S.C. § 706(2)(A).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray this Court:

131. Declare that the Directive conflicts with OGE regulations governing financial conflicts of interest, 5 C.F.R. § 2640.203(g), and is unlawful because it is “arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law,” and is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A), (C).

132. Declare that the Directive is contrary to OGE regulations governing the procedures for promulgating supplemental agency regulations, 5 C.F.R. § 2635.105, and, therefore, is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” as well as “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

133. Declare that the Directive is arbitrary, capricious, and contrary to FACA.

134. Declare that the Directive is arbitrary, capricious, and contrary to statutes authorizing EPA advisory committees.

135. Vacate and set aside the Directive and actions taken by EPA in reliance on the Directive.

136. Enjoin Administrator Pruitt from removing any individual from an EPA advisory committee pursuant to the Directive or otherwise implementing the provision of the Directive barring EPA grant recipients from service on EPA advisory committees.

137. Enjoin Administrator Pruitt to reinstate any individual removed from an EPA advisory committee pursuant to the Directive or caused by the Directive to resign from an EPA advisory committee.

138. Order such other and further relief as justice may require.

DATED: December 21, 2017

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/s/ Neil Gormley  
Neil Gormley (D.C. Bar No. 1008462)  
Tosh Sagar (D.D.C. Bar No. D00497; CA Bar  
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Earthjustice  
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tsagar@earthjustice.org

Patti Goldman (D.C. Bar No. 398565)  
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Suite 203  
Seattle, WA 98104  
206-343-7340  
pgoldman@earthjustice.org

*Attorneys for Physicians for Social  
Responsibility, National Hispanic Medical  
Society, International Society for Children's  
Health and the Environment, and Edward  
Lawrence Avol*

**From:** Penman, Crystal

**Location:** Ex. 6 - Personal Privacy

**Importance:** Normal

**Subject:** EFAB Full Board Mtg February 20-21, 2018 (Washington, DC)

**Start Date/Time:** Fri 12/8/2017 4:00:00 PM

**End Date/Time:** Fri 12/8/2017 5:00:00 PM

OW Request w Mike Shapiro EFAB Winter 2018 Mtg.docx

EFAB 2018 Charter Renewal Transmittal Memo 12-06-17.docx

EFAB 2018 Renewal Charter Draft 12-06-17.docx

EFAB 2018 Membership Balance Plan 12-06-17.docx

EFAB 2018 Charter Justification 12-06-17.docx

EFAB 2018 Charter Renewal FRN 12-06-17.docx

EFAB 2018 Re-Charter FRN Checklist 12-06-17.docx

EFAB Aggregate Chart FINAL November2017 (003).docx

EFAB Charge Matrix-Winter 2018.docx

final draft fac directive-10.31.2017.pdf

EFAB Pre-brief Agenda.docx

GRID EFAB Membership November2017FINAL(3).doc

**To:** Tracy, Tom[Tracy.Tom@epa.gov]; Ali Goldstone[Ali.Goldstone@icf.com]  
**From:** Thomas, Laura  
**Sent:** Thur 2/22/2018 6:49:15 PM  
**Subject:** RE: BOSC Member Reference Guide  
[Serving on the EPA Board of Scientific Counselors draft 2-22-18.docx](#)  
[Serving on the EPA Board of Scientific Counselors draft 2-22-18.pdf](#)

Great! Attached is the final version in Word and PDF form.

Thanks!

Laura

**LAURA THOMAS, CGMP** | Senior Associate, Meeting Planner

ICF | +1.703.251.8977 direct

**From:** Tracy, Tom [mailto:Tracy.Tom@epa.gov]  
**Sent:** Thursday, February 22, 2018 11:44 AM  
**To:** Thomas, Laura <Laura.Thomas@icf.com>; Goldstone, Ali <Ali.Goldstone@icf.com>  
**Subject:** RE: BOSC Member Reference Guide

Looks great!

Your changes are perfect and answered the couple outstanding questions.

Thanks!

tom

**From:** Thomas, Laura [mailto:Laura.Thomas@icf.com]  
**Sent:** Thursday, February 22, 2018 10:47 AM  
**To:** Tracy, Tom <Tracy.Tom@epa.gov>; Ali Goldstone <Ali.Goldstone@icf.com>

**Subject:** RE: BOSC Member Reference Guide

Hi Tom,

I apologize for the delay on this. Attached is the updated BOSC member reference guide with Jace's and FACMD's comments addressed and changes accepted. There are two versions with comments:

1. “\_comments addressed” – this shows all major comments and my response regarding how they were addressed
2. “\_outstanding questions” – this only has the outstanding questions for you to answer.

I'm happy to answer any questions over the phone if that would be helpful.

Thanks!

Laura

**LAURA THOMAS, CGMP** | Senior Associate, Meeting Planner

ICF | +1.703.251.8977 direct

**From:** Tracy, Tom [<mailto:Tracy.Tom@epa.gov>]

**Sent:** Wednesday, February 07, 2018 10:53 AM

**To:** Thomas, Laura <[Laura.Thomas@icf.com](mailto:Laura.Thomas@icf.com)>; Goldstone, Ali <[Ali.Goldstone@icf.com](mailto:Ali.Goldstone@icf.com)>

**Subject:** FW: BOSC Member Reference Guide

Hi,

Received FACMD's review. Couple of comments included.

**From:** Moreau, Megan  
**Sent:** Wednesday, February 7, 2018 10:14 AM  
**To:** Tracy, Tom <[Tracy.Tom@epa.gov](mailto:Tracy.Tom@epa.gov)>  
**Cc:** Rousey, Toni <[Rousey.Toni@epa.gov](mailto:Rousey.Toni@epa.gov)>  
**Subject:** Re: BOSC Member Reference Guide

Hi Tom,

This is great! Thanks again for the chance to review. Attached are a few minor comments/suggestions.

Megan Moreau  
Committee Management Officer  
Federal Advisory Committee Management Division  
Office of Resources, Operations and Management  
Office of Administration and Resources Management  
U.S. Environmental Protection Agency  
202-564-5320

---

**From:** Tracy, Tom  
**Sent:** Wednesday, January 24, 2018 4:24 PM  
**To:** Moreau, Megan; Rousey, Toni  
**Subject:** RE: BOSC Member Reference Guide

Hi!

Would it be possible to review by February 6th?

Many thanks!

Tom

**From:** Moreau, Megan  
**Sent:** Wednesday, January 24, 2018 4:15 PM  
**To:** Tracy, Tom <[Tracy.Tom@epa.gov](mailto:Tracy.Tom@epa.gov)>; Rousey, Toni <[Rousey.Toni@epa.gov](mailto:Rousey.Toni@epa.gov)>  
**Subject:** RE: BOSC Member Reference Guide

Hi Tom,

Thanks for the opportunity to review. How soon would you like our feedback?

-Megan

**From:** Tracy, Tom  
**Sent:** Wednesday, January 24, 2018 1:21 PM  
**To:** Rousey, Toni <[Rousey.Toni@epa.gov](mailto:Rousey.Toni@epa.gov)>; Moreau, Megan <[Moreau.Megan@epa.gov](mailto:Moreau.Megan@epa.gov)>  
**Subject:** BOSC Member Reference Guide

Hi!

I'd like to provide the attached to the BOSC members. It's not really an SOP but to serve as a reference guide ☺ Per that last DFO meeting, appreciate your all's review and comment!

Many thanks!

Tom



**To:** Tracy, Tom[Tracy.Tom@epa.gov]  
**From:** Fannin-Hughes, Ian  
**Sent:** Thur 11/23/2017 6:25:19 PM  
**Subject:** BOSC Fannin-Hughes

Mr. Tracy,

I just read through Administrator Pruitt's latest directive "*Strengthening and Improving Membership on EPA Federal Advisory Committees*" and wanted to touch on a few things. I am still very interested in working on the BOSC, to better guide the mission of the EPA. It is also my belief that I exemplify all four areas of Administrator Pruitt's directive.

- (1) "*Strengthening Member Independence*": I am not a current grantee, nor have I previously received EPA grants for any research that I have conducted or been a part of.
- (2) "*Increase State, Tribal and Local Government Participation*": My current work with local government at the city and county level gives me a great level of experience implementation of environmental regulations and policies. I have also worked at the state level as a water resource regulator giving me knowledge and skills in environmental regulation, policy and compliance that extend outside of Kansas.
- (3) "*Enhance Geographic Diversity*": I am from Region VII that has been under represented among the committees and feel that my work in Kansas gives me a unique perspective on the EPA's position and the continued implementation of cooperative federalism in environmental regulation.
- (4) "*Promote Fresh Perspectives*": As someone who has not participated in a Federal Advisory Committee, I can offer a fresh perspective to the BOSC from my experiences gained as in my undergraduate coursework, research and work performed as an undergraduate (USDA, USGS, KS. Dept of Wildlife and Parks), graduate coursework (environmental justice, policy and regulation) and in my career (ecotoxicology researcher, state environmental regulator, and environmental scientist for seventh largest city EPA Region VII)

Thank you for your time and I hope to be able to further discuss my qualifications with you.  
Sincerely,

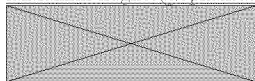
Ian

**Ian Fannin-Hughes**

Water Quality Specialist  
Public Works

City of Overland Park  
8500 Santa Fe Drive  
Overland Park, KS 66212

(w) 913-895-6172 | (m) 913-278-9041 | (f) 913-890-1055  
[ian.fannin-hughes@opkansas.org](mailto:ian.fannin-hughes@opkansas.org) | [www.opkansas.org](http://www.opkansas.org)



----- Forwarded message -----

**From:** BOSC <[BOSC@epa.gov](mailto:BOSC@epa.gov)>  
**Date:** Tue, Aug 22, 2017 at 4:40 PM  
**Subject:** RE: BOSC - Nomination Application Resume  
**To:** "Fannin-Hughes, Ian" <[ian.fannin-hughes@opkansas.org](mailto:ian.fannin-hughes@opkansas.org)>

Hi Ian,

Appreciate your interest in the BOSC. We hope to complete our review within the next four to six weeks.

Thanks,

Tom

**From:** Fannin-Hughes, Ian [mailto:[ian.fannin-hughes@opkansas.org](mailto:ian.fannin-hughes@opkansas.org)]

**Sent:** Friday, July 21, 2017 12:28 PM

**To:** BOSC <[BOSC@epa.gov](mailto:BOSC@epa.gov)>

**Subject:** Re: BOSC - Nomination Application Resume

Mr. Tracy,

I hope your week is going well. I wanted to reach out to you and let you know that I am still very interested in the opportunity to work on the Board of Scientific Counselors at the Environmental Protection Agency. I believe my experience, skill set and insight into the environmental issues that face our nation, will allow me to be an exceptional member of the team that give recommendations and advice to the Office of Research and Development. I might not have a decade of experience, but I do have passion and drive to improve the environment and health at the local level in my City and at the federal level. My diverse experience has given me a wide breadth of knowledge that I believe will benefit the BOSC and our nation.

Do you have a timeline on when the nominations will be made?

Thank you for your time.

Sincerely,

Ian

**Ian Fannin-Hughes**

Water Quality Specialist  
Public Works

City of Overland Park  
8500 Santa Fe Drive  
Overland Park, KS 66212

(w) [913-895-6172](tel:913-895-6172) | (m) [785-640-7546](tel:785-640-7546) | (f) [913-890-1055](tel:913-890-1055)  
[ian.fannin-hughes@opkansas.org](mailto:ian.fannin-hughes@opkansas.org) | [www.opkansas.org](http://www.opkansas.org)

On Fri, May 26, 2017 at 1:54 PM, BOSC <[BOSC@epa.gov](mailto:BOSC@epa.gov)> wrote:

Hi,

Received.

Thank you for your interest in the BOSC,

Tom

**Thomas Tracy**

Designated Federal Officer

Board of Scientific Counselors  
Office of Research and Development  
U.S. Environmental Protection Agency  
Mail Code 8104R  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

202-564-6518

**From:** Fannin-Hughes, Ian [mailto:[ian.fannin-hughes@opkansas.org](mailto:ian.fannin-hughes@opkansas.org)]  
**Sent:** Friday, May 26, 2017 12:18 PM  
**To:** BOSC <[BOSC@epa.gov](mailto:BOSC@epa.gov)>  
**Subject:** BOSC - Nomination Application Resume

Hello,

My resume PDF file was too large to attach to the BOSC nomination application. I was told to email my resume instead.

Thank you,

**Ian Fannin-Hughes**

Water Quality Specialist  
Public Works

City of Overland Park  
8500 Santa Fe Drive  
Overland Park, KS 66212

(w) [913-895-6172](tel:913-895-6172) | (m) [913-278-9041](tel:913-278-9041) | (f) [913-890-1055](tel:913-890-1055)  
[ian.fannin-hughes@opkansas.org](mailto:ian.fannin-hughes@opkansas.org) | [www.opkansas.org](http://www.opkansas.org)



**To:** Thomas, Laura[Laura.Thomas@icf.com]; Goldstone, Ali[Ali.Goldstone@icf.com]  
**From:** Tracy, Tom  
**Sent:** Mon 2/26/2018 4:16:17 PM  
**Subject:** FW: BOSC Member Reference Guide  
Serving on the EPA Board of Scientific Counselors Final Draft 2-23-18-tcb.docx

Hi,

I'm taking a break from house projects. I didn't review this very closely. Can you all take a look and incorporate the changes as appropriate.

Thanks!

Tom

**From:** Benner, Tim  
**Sent:** Friday, February 23, 2018 3:21 PM  
**To:** Tracy, Tom <Tracy.Tom@epa.gov>; Cuje, Jace <Cuje.Jace@epa.gov>; Deener, Kathleen <Deener.Kathleen@epa.gov>  
**Subject:** RE: BOSC Member Reference Guide

Hi Tom,

I finally had a chance for a quick look at this. Some markups throughout, but nothing major. Looks very useful.

Tim

**From:** Tracy, Tom  
**Sent:** Friday, February 23, 2018 11:00 AM

**To:** Cuje, Jace <Cuje.Jace@epa.gov>; Benner, Tim <Benner.Tim@epa.gov>; Deener, Kathleen <Deener.Kathleen@epa.gov>

**Subject:** BOSC Member Reference Guide

Hi!

Attached is the latest version incorporating the edits / suggestions I received. Appreciate your taking another look before sending out to folks.

Many thanks!

Tom

**Thomas Tracy**  
Designated Federal Officer

Board of Scientific Counselors  
Office of Research and Development  
U.S. Environmental Protection Agency  
Mail Code 8104R  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

202-564-6518

**To:** ckarr@uw.edu[ckarr@uw.edu]  
**From:** Zarba, Christopher  
**Sent:** Tue 10/31/2017 7:58:39 PM  
**Subject:** EPA - SAB  
[EPA Directive Letter from SP.pdf](#)  
[SAB Directive.pdf](#)

I just left you a phone message. Attached are the two documents I mentioned in that phone message. I look forward to chatting with you at your nearest convenience.

I will keep calling and you can reach me at the contact points listed below.

**Christopher S. Zarba**

**US EPA Science Advisory Board**

**zarba.christopher@epa.gov**

**O (202) 564-0760**

**M (202) 731-6423**





E. SCOTT PRUITT  
ADMINISTRATOR

**TO:** Assistant Administrators  
Regional Administrators  
Office of General Counsel

**FROM:** E. Scott Pruitt  
Administrator

**DATE:** October 31, 2017

**SUBJECT:** Strengthening and Improving Membership on EPA Federal Advisory Committees

Federal Advisory Committees (FACs) serve important and influential roles for federal agencies – particularly the U.S. Environmental Protection Agency (EPA).<sup>1</sup> EPA's FACs presently provide advice on a broad array of subjects, including pesticides,<sup>2</sup> drinking water quality,<sup>3</sup> air quality,<sup>4</sup> rural community welfare,<sup>5</sup> and children's health.<sup>6</sup> FACs can be established by statutory requirement, at the discretion of federal agencies, or through presidential directive.<sup>7</sup> Currently, EPA manages 22 FACs that provide valuable expertise, insight and recommendations that guide the Agency's decision-making in fulfilling its core mission of protecting human health and the environment.<sup>8</sup>

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<sup>1</sup> "Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse." FACA 101, <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/finding-information-on-faca-committees/faca-101>.

<sup>2</sup> Pesticide Program Dialogue Committee (PPDC), <https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc>.

<sup>3</sup> National Drinking Water Advisory Council (NDWAC), <https://www.epa.gov/ndwac>.

<sup>4</sup> Clean Air Scientific Advisory Committee (CASAC), <https://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

<sup>5</sup> Farm, Ranch, and Rural Communities Advisory Committee (FRRCC), <https://www.epa.gov/faca/frrcc>.

<sup>6</sup> Children's Health Protection Advisory Committee (CHPAC), <https://www.epa.gov/children>.

<sup>7</sup> The Clean Air Scientific Advisory Committee (CASAC) was established under the Clean Air Act. The Board of Scientific Counselors (BOSC) was established by EPA. The Good Neighbor Environmental Board (GNEB) was established by presidential authority.

<sup>8</sup> All Federal Advisory Committees at EPA, <https://www.epa.gov/faca/all-federal-advisory-committees-epa>.



E. SCOTT PRUITT  
ADMINISTRATOR

The Federal Advisory Committee Act (FACA)<sup>9</sup> generally requires that FACs operate in an independent, orderly, balanced, and transparent manner.<sup>10</sup> Critical to the integrity of FACs is the selection of qualified and knowledgeable candidates. Since each FAC serves a unique purpose, FACs differ in specific composition requirements,<sup>11</sup> but all FACs must be “fairly balanced in terms of the points of view represented and functions to be performed by the committee.”<sup>12</sup> The EPA Administrator should choose qualified candidates to serve on the EPA’s FACs.<sup>13</sup> In addition to knowledge and expertise, other qualifications should also factor strongly into selecting FAC members. Candidates should be independent from the Agency, must avoid any conflicts of interest within the scope of their review, and should be fully committed to objectively serving the Agency and public.

In the spirit of cooperative federalism and recognition of the unique experience of state, tribal and local government officials, committee balance should reflect prominent participation from state, tribal and local governments. Such participation should be appropriate for the committee’s purpose and function. Furthermore, FAC membership should be balanced with persons from different parts of the country to create geographic diversity. Finally, in order to ensure broader participation in FACs, and to ensure that advancements in scientific and technological thinking continually factor into committee reviews, regular rotation of members to assure fresh perspectives should also guide the Agency’s choice of FAC members.

This memorandum accompanies, and explains the principles underlying, a set of directives intended to strengthen and improve the composition of EPA’s FACs in ways that advance the Agency’s mission to protect public health and welfare, that are consistent with the principles of cooperative federalism, and that follow the rule of law and agency directives and guidance.

<sup>9</sup> 5 U.S.C. app., <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf>.

<sup>10</sup> FACA Essentials at EPA for Federal Advisory Committee Members, [https://www.epa.gov/sites/production/files/2017-02/documents/faca\\_essentials\\_for\\_2016\\_pending.pdf](https://www.epa.gov/sites/production/files/2017-02/documents/faca_essentials_for_2016_pending.pdf).

<sup>11</sup> For example, the Clean Air Scientific Advisory Committee (CASAC) is comprised of seven members, including one physician, one state air pollution control agency representative, and one member of the National Academy of Sciences. *See* 42 U.S.C. § 7409(d)(2). However, not all FACs have statutory membership requirements.

<sup>12</sup> 5 U.S.C. app. § 5(b)(2).

<sup>13</sup> 41 CFR 102-3.60(b)(3) (“Fairly balanced membership. A description of the agency’s plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and **qualified**, as appropriate to the nature and functions of the advisory committee.”) (emphasis added).



E. SCOTT PRUITT  
ADMINISTRATOR

***A. Strengthen Member Independence***

A vital part of ensuring integrity and confidence in EPA's FACs comes from guaranteeing that FAC members remain independent of the Agency during their service. EPA FAC members should avoid financial entanglements with EPA to the greatest extent possible.

Non-governmental and non-tribal members in direct receipt of EPA grants while serving on an EPA FAC can create the appearance or reality of potential interference with their ability to independently and objectively serve as a FAC member. FAC members should be motivated by service and committed to providing informed and independent expertise and judgment.

Ensuring FAC member independence strengthens the integrity, objectivity and reliability of EPA FACs. Accordingly, in addition to EPA's existing policies and legal requirements preventing conflicts of interest among the membership of the Agency's FACs, it shall be the policy of the Agency that no member of an EPA federal advisory committee currently receive EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle should not apply to state, tribal or local government agency recipients of EPA grants.

***B. Increase State, Tribal and Local Government Participation***

EPA alone cannot fully meet the environmental challenges this country faces. Under the principle of cooperative federalism, environmental protection is a duty shared between state, tribal, local and federal governments. EPA relies on states, tribes and local communities to assist in, and in some cases assume primary responsibility for, planning and overseeing environmental protection.<sup>14</sup> Rather than solely rely on the opinions of federal officials in Washington, D.C., the Agency should seek the expertise and unique perspectives of public servants at all levels of government across the country. Cooperative federalism underlies many of the environmental statutes passed by Congress since states, tribes and local governments have a better understanding of, and are well-positioned to address, their environmental challenges.

Therefore, state, tribal and local government officials should figure prominently in FAC membership. Increasing state, tribal and local government participation on FACs strengthens EPA decision-making through enhanced public inclusion in EPA policy and programs choices, and joint accountability at all levels of government.

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<sup>14</sup> The Clean Air Act, Clean Water Act, and Safe Drinking Water Act contain provisions giving states and tribes primary responsibility for environmental protection.





E. SCOTT PRUITT  
ADMINISTRATOR

### *C. Enhance Geographic Diversity*

EPA's FACs should be balanced to ensure the inclusion and consideration of different viewpoints, consistent with a fundamental goal of FACA.<sup>15</sup> Participation of members from a broad range of geographic regions – especially areas that have historically been unrepresented or underrepresented – should prominently factor into creating balanced membership on FACs.<sup>16</sup> The distinctive experiences, climates and environmental issues facing citizens spread across the United States naturally necessitates strong geographic diversity so that extensive regional perspectives are represented on FACs.<sup>17</sup>

Accordingly, with the exception of FACs established to specifically address regional/area specific issues, EPA shall seek to ensure that FAC membership is geographically diverse. Emphasis should be given to candidates from states or EPA regions that are unrepresented or underrepresented on EPA FACs.

### *D. Promote Fresh Perspectives*

Experts serving on FACs should regularly rotate on and off committees to allow for new opinions and fresh ideas. Members who serve on FACs for an extended and continuous period of time risk minimizing viewpoints, lessening diversity, and preventing other qualified candidates from serving. EPA acknowledges the importance of fresh perspectives in its peer review handbook to “keep balance” and “avoid repeated use” of persons that could diminish original feedback.<sup>18</sup>

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<sup>15</sup> “(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and **diverse opinions** to the Federal Government.” 5 U.S.C. app. § 2(a), <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf> (emphasis added).

<sup>16</sup> “The composition of an advisory committee’s membership will depend upon several factors, including: (i) The advisory committee’s mission; (ii) The **geographic**, ethnic, social, economic, or scientific impact of the advisory committee’s recommendations. . .” 41 C.F.R. Part 102-3, App. A to Subpart B (emphasis added); [https://www.gsa.gov/cdnstatic/FACAFinalRule\\_R2E-cNZ\\_0Z5RDZ-i34K-pR.pdf](https://www.gsa.gov/cdnstatic/FACAFinalRule_R2E-cNZ_0Z5RDZ-i34K-pR.pdf).

<sup>17</sup> See CASAC Membership Balance Plan stating that “Geographic location may be considered” as an “important” factor in achieving a balanced FAC, <https://www.facadatabase.gov/committee/charters.aspx?cid=634&aid=51>; Board of Scientific Counselors stating that “Balances in disciplines, work sector (i.e., academia, government – federal/state/local, industry, environmental associations), diversity, and geographic distribution area are also considered.” <https://www.facadatabase.gov/committee/charters.aspx?cid=1577&aid=51>.

<sup>18</sup> *Peer Review Handbook*, Science and Technology Policy Council, U.S. Env’tl. Prot. Agency, [https://www.epa.gov/sites/production/files/2016-03/documents/epa\\_peer\\_review\\_handbook\\_4th\\_edition.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf).



E. SCOTT PRUITT  
ADMINISTRATOR

New members also help to ensure that FACs remain current with innovative and new scientific and technological expertise. Membership should therefore be dynamic and open to a broad, diverse array of experts who can potentially provide unique and informative new perspectives.<sup>19</sup>

**Conclusion**

EPA's FAC members provide essential and invaluable advice and support to the Agency. Strengthening FAC membership independence from EPA, increasing state, tribal and local government participation, and emphasizing geographic diversity and fresh perspectives, to the greatest extent practicable, serve to enhance the diversity of viewpoints and thereby provide robust and appropriately balanced advice to EPA. These changes also further help EPA meet its core mission of providing the American people with clean air, land, and water.

---

<sup>19</sup> EPA's Peer-Review Handbook considers adding fresh perspectives through new peer reviewers an "important qualification" to add balance of views and avoid the repeated use of the same persons. See [https://www.epa.gov/sites/production/files/2016-03/documents/epa\\_peer\\_review\\_handbook\\_4th\\_edition.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf).

**To:** rjohnston@clarku.edu[rjohnston@clarku.edu]  
**From:** Zarba, Christopher  
**Sent:** Tue 10/31/2017 7:56:42 PM  
**Subject:** EPA - SAB  
[EPA Directive Letter from SP.pdf](#)  
[SAB Directive.pdf](#)

Attached are the documents.

**Christopher S. Zarba**

**US EPA Science Advisory Board**

**zarba.christopher@epa.gov**

**O (202) 564-0760**

**M (202) 731-6423**

**To:** rhohnston@clarku.edu[rhohnston@clarku.edu]  
**From:** Zarba, Christopher  
**Sent:** Tue 10/31/2017 7:51:51 PM  
**Subject:** EPA-SAB  
[EPA Directive Letter from SP.pdf](#)  
[SAB Directive.pdf](#)

Attached are the two documents I mentioned.

Feel free to contact me at any time if you have questions or concerns.

**Christopher S. Zarba**

**US EPA Science Advisory Board**

**zarba.christopher@epa.gov**

**O (202) 564-0760**

**M (202) 731-6423**

**To:** kiros@usc.edu[kiros@usc.edu]  
**From:** Zarba, Christopher  
**Sent:** Tue 10/31/2017 7:47:09 PM  
**Subject:** New EPA SAB Directive  
[SAB Directive.pdf](#)  
[EPA Directive Letter from SP.pdf](#)

I just left you a phone message. Attached are the two documents I mentioned in that phone message. I look forward to chatting with you at your nearest convenience.

I will keep calling and you can reach me at the contact points listed below.

**Christopher S. Zarba**

**US EPA Science Advisory Board**

**zarba.christopher@epa.gov**

**O (202) 564-0760**

**M (202) 731-6423**



**To:** dhbennett@ucdavis.edu[dhbennett@ucdavis.edu]  
**From:** Zarba, Christopher  
**Sent:** Tue 10/31/2017 7:42:37 PM  
**Subject:** EPA Science Advisory Board  
[SAB Directive.pdf](#)  
[EPA Directive Letter from SP.pdf](#)

I just left you a phone message. Attached are the two documents I mentioned in that phone message. I look forward to chatting with you at your nearest convenience.

I will keep calling and you can reach me at the contact points listed below.

**Christopher S. Zarba**

**US EPA Science Advisory Board**

**zarba.christopher@epa.gov**

**O (202) 564-0760**

**M (202) 731-6423**

**To:** wilson.1376@osu.edu[wilson.1376@osu.edu]  
**From:** Zarba, Christopher  
**Sent:** Tue 10/31/2017 8:36:14 PM  
**Subject:** EPA - SAB  
[SAB Directive.pdf](#)  
[EPA Directive Letter from SP.pdf](#)

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I will keep calling and you can reach me at the contact points listed below.

**Christopher S. Zarba**

**US EPA Science Advisory Board**

**zarba.christopher@epa.gov**

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**M (202) 731-6423**

**To:** knadeau@stanford.edu[knadeau@stanford.edu]  
**From:** Zarba, Christopher  
**Sent:** Tue 10/31/2017 8:03:41 PM  
**Subject:** EPA - SAB  
[SAB Directive.pdf](#)  
[EPA Directive Letter from SP.pdf](#)

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## Christopher S. Zarba

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**To:** Francine.laden@channing.harvard.edu[Francine.laden@channing.harvard.edu]  
**From:** Zarba, Christopher  
**Sent:** Tue 10/31/2017 8:01:05 PM  
**Subject:** EPA - SAB  
[SAB Directive.pdf](#)  
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## Christopher S. Zarba

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